2012 IL App (3d) 120072-U

Order filed June 5, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re C.T., J.T., and M.T.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Minors,	)	La Salle County, Illinois
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-12-0072
	)	Circuit Nos. 08-JA-41
v.	)	08-JA-42
	)	10-JA-10
C.W.,	)	
	)	Honorable H. Chris Ryan,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determinations that appellant was an unfit parent and that it was in the best interest of the children that his parental rights be terminated were not against the manifest weight of the evidence. Affirmed.

¶ 2 Appellant, C.W., is the father of C.T., J.T. and M.T. The State filed petitions to terminate appellant's parental rights with respect to each child. Following a hearing, the trial court found appellant unfit on two grounds: first, he failed to maintain a reasonable degree of interest, concern or responsibility for the children; second, he failed to make reasonable progress toward the return of the children to his custody during a nine-month period after the children were adjudicated neglected. The trial court then held a best interest hearing and determined that it was in the best interest of the children to terminate appellant's parental rights. He now appeals the trial court's findings that he is unfit and that it is in the best interest of the children to terminate his parental rights. The trial court's findings are not against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 The trial court entered dispositional orders finding C.T. and J.T. neglected and both parents unfit on September 30, 2008. The court entered the order finding M.T. neglected and both parents unfit on September 15, 2010. On September 28, 2011, the State filed motions to terminate both parents' parental rights with regard to each child. The mother voluntarily relinquished all parental rights prior to a hearing on the motion. A consolidated hearing was held on the motions with respect to appellant.

¶ 5 Ada Weistart testified that she was the caseworker for the family from August 2009 to May 2010. Weistart evaluated appellant's client-service plan dated March 11, 2010, which covered the time period from March 2010 to September 2010. Weistart gave the appellant an

unsatisfactory rating during that period for the tasks of maintaining housing, maintaining employment, maintaining a drug-free lifestyle, for parenting classes, and for drug and alcohol counseling. Appellant was homeless or living with the children's mother during that time period. Appellant was unemployed, he failed to submit to all of the random drug tests, and the random drug tests that he did complete were positive for illegal drugs. The parenting educator would go to appellant's home to teach him parenting skills, but often appellant was not home. The caseworker referred appellant for drug and alcohol counseling, but he refused to attend the counseling. Furthermore, appellant did not keep in contact with the caseworker for a six-month time period during the statutory nine-month period. The caseworker could contact appellant only by contacting the children's mother who in turn contacted appellant. Appellant never initiated contact with the caseworker.

¶ 6 Richard Goetz testified that he was first assigned to appellant's case in 2008, and the case was reassigned from Ada Weistart to him in July 2010. Goetz testified that he agreed with Weistart's evaluation of appellant's client-service plan dated March 11, 2010. Goetz stated that appellant's client-service plans were evaluated in March and September. Goetz evaluated appellant's client-service plan dated September 13, 2010, which covered the time period from September 2010 to March 2011. Appellant received an overall unsatisfactory rating for this client-service plan. He received an unsatisfactory rating on each of the tasks in his client-service plan. Appellant refused to perform drug tests and admitted to using marijuana during this time period. Goetz did not have contact with appellant from October of 2010 until March of 2011.

Appellant was unemployed, and he did not attend any parenting classing during this time period. He did not visit his children for the six-month time period from October of 2010 to March of 2011. Moreover, appellant did not have stable housing, essentially he led a homeless and transient lifestyle.

¶ 7 Goetz also evaluated appellant's client-service plan dated March 11, 2011, which covered the time period from March 2011 to September 2011. Goetz gave appellant an overall unsatisfactory rating for this time period. Appellant received an unsatisfactory rating on every task in the client-service plan, but he did begin visiting with his children after missing visitation for six months. Appellant was homeless, unemployed and was not engaged in any services during this time period.

¶ 8 Goetz further testified that he evaluated appellant's most recent client-service plan dated September 9, 2011, which covered the time period from March 2011 to September 2011. Goetz stated that nothing had changed since the prior client-service plan dated March 11, 2001. The appellant was not engaged in services, and he admitted to using marijuana.

¶ 9 Marissa Melau next testified that she was a family habilitation specialist for Catholic Charities. She stated that she was responsible for transporting parents and children to visits, supervising visitation, and filling out documentation for the court. Melau was assigned appellant's case in July 2010, and appellant was allowed one visit per week for one hour. However, appellant's visitation was very inconsistent from July 2010 to the date of the hearing. He did not visit his children at all for the six-month period from December 2010 to the end of

May 2011. Melau explained that appellant's visits were arranged through the children's mother. Appellant would communicate with the children's mother and he would simply go with her at the time of her visits. Melau then had to call appellant's brother's phone number and arrange visits through the appellant's brother. Melau did not have a way to directly contact the appellant.

¶ 10 Appellant testified that he only missed visits with the children if he was out of town or did not know about the visit. He admitted that he had no suitable housing or income, despite looking for work. He said that he participated in parenting classes in 2010, but stopped attending when the teacher went on vacation. He also explained that between December 2010 and May 2011, he had made a number of trips to Memphis because his brother was dying. He had hoped to have the children placed with his mother, but after a home study was conducted, her home was not approved for placement. Appellant testified that 90% of his family lived in the Memphis area and he would like to relocate there with the children; he would have family support there. He admitted that he last took drugs a couple of days before the hearing.

¶ 11 Following the hearing, the court found appellant unfit due to the failure to maintain a reasonable degree of interest, concern, or responsibility for the children and due to the failure to make reasonable progress toward obtaining custody of the children.

¶ 12 A best interest hearing was held on January 18, 2012. At the best interest hearing, Goetz testified that he has been the caseworker for the family for the last three years. Goetz stated that J.T. was seven years old, C.T. was four years old and M.T. was two years old at the time of the best interest hearing. C.T. and M.T. were placed in the same foster home, but J.T. was living in a

different foster home. All three children were thriving in their foster homes. J.T. was the only child in his foster home, and his foster parents are a young married couple that are very committed to J.T. J.T. has lived with his current foster parents for the last 13 months. The foster home has three bedrooms and J.T. has his own bedroom. J.T. was in first grade, and his foster parents are very involved with his schooling. J.T.'s foster parents take care of all of his medical needs. J.T. is very bonded to his foster parents, he feels comfortable in their home and refers to his foster parents as "mom and dad." J.T.'s foster parents are very bonded to J.T. and they wish to adopt him. J.T. appears to love his foster parents, and he wants to remain in their care. Goetz opined that it would be in J.T.'s best interest if he was adopted by his current foster parents.

¶ 13 C.T. lives in a four-bedroom house in the country and has his own bedroom. C.T. was in his second year of preschool, and his foster parents were involved with his schooling. C.T.'s foster parents keep in regular communication with his teacher, they help him with his homework and they attend any necessary meetings with regard to his education. C.T.'s foster parents have been attending to all of C.T.'s medical treatment while he has been in their care. C.T. is very bonded to his foster parents, he is very affectionate toward them and refers to them as "mom and dad." C.T.'s current foster home is the only home that he has known. C.T.'s foster parents are very bonded to him, and they wish to adopt C.T. C.T. appears to love his foster parents and wants to remain in their care. Goetz opined that it would be in C.T.'s best interest that he be adopted by his current foster parents.

¶ 14 M.T. lives in the same home as C.T. and has lived in this foster home her entire life.

M.T. has her own bedroom and has no specialized needs. M.T.'s foster parents have been cooperative with M.T.'s developmental screening; the developmental screening showed that she is progressing appropriately. M.T.'s foster parents have been involved in seeing that M.T. receives all the medical care she needs while in their custody. M.T. is very bonded to her foster parents, she is very affectionate toward them, she goes to them for comfort and refers to them as "mommy and daddy." M.T.'s foster parents wish to adopt her. Goetz opined that it would be in M.T.'s best interest that she be adopted by her current foster parents. The trial court terminated appellant's parental rights with respect to all three children.

¶ 15 Appellant now appeals from the findings in each of the cases. We have consolidated the appeals.

¶ 16 ANALYSIS

¶ 17 Each case where the State seeks to terminate parental rights is *"sui generis* and must be decided based on the particular facts and circumstances presented." *In re D.D.*, 196 Ill. 2d 405, 422 (2001). The State must prove by clear and convincing evidence the grounds of parental unfitness alleged in the petition to terminate parental rights. 705 ILCS 405/2-29 (West 2010); *In re D.D.*, 196 Ill. 2d at 417. Clear and convincing evidence is "proof greater than a preponderance, but not quite approaching the criminal standard of beyond a reasonable doubt." *In re D.T.*, 212 Ill. 2d 347, 362 (2004). Once the court has found that the parent is unfit, the State has the burden of proving by a preponderance of the evidence that it is in the children's best interest to terminate the parent's parental rights. *Id.* at 365.

¶ 18 The trial court's decision regarding fitness and whether or not to terminate parental rights will not be reversed on appeal unless it is contrary to the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. For a finding to be against the manifest weight of the evidence, the opposite result must be clearly evident from the review of the evidence. *Id.* On review, the findings of the trial court must be given great deference since it had the opportunity to view and evaluate the testimony of the witnesses. *In re Gwynne P.*, 346 Ill. App. 3d 584, 590 (2004).

¶ 19 I. Interest, Concern or Responsibility

¶ 20 A parent may be found unfit on any number of bases; one such basis is for failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2010)*; In re Adoption of Syck*, 138 Ill. 2d 255, 279-80 (1990). "Because the language of section 1(D)(b) of the Adoption Act [(750 ILCS 50/1-24 (West 2010))] is in the disjunctive, any of the three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare." *In re C.E.*, 406 Ill. App. 3d 97,108 (2010).

¶ 21 "If visitation is impractical, the parent can show reasonable concern, interest, and responsibility in a child through letters, telephone calls, and gifts, depending on the frequency and tone of those communications. [Citation.] Completion of service plan objectives also can be considered evidence of a parent's concern, interest, and responsibility." *In re Gwynne P.*, 346 Ill. App. 3d at 591. A finding of unfitness based upon the failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare may be based on a parent's failure to

complete treatment for drug or alcohol problems. *In re C.L.T.*, 302 Ill App. 3d 770, 777 (1999).

¶ 22 The evidence in this case was overwhelming that appellant failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the children. C.T. and J.T. were adjudicated neglected and abused on September 2008. M.T. was adjudicated neglected and abused in 2010. Appellant has been aware of the tasks required of him since September 30, 2008. Appellant has not completed one task required of him except for occasionally visiting with his children. Appellant failed to visit with his children or have any contact with his children for two six-month time periods since the children have been wards of the court. He had no contact with the caseworker or any visits with the children from October 2010 to March 2011 and failed to visit the children or have any contact with them from December 2010 to the end of May 2011. Appellant did not send any letters, make any telephone calls, or send any gifts to the children at any time. He also failed to complete any of the service plan objectives, he failed to complete drug and alcohol treatment, and he has continued to use marijuana as recently as October 2011.

¶ 23 The trial court's decision finding that appellant failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children was not against the manifest weight of the evidence. The evidence was overwhelming that appellant failed to maintain any reasonable degree of interest, concern, or responsibility as to the welfare of the children.

¶ 24 II. Progress in Nine-Month Period

¶ 25 A parent may be unfit by: "(i) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the child; (ii) failure to make reasonable progress toward

the return of the child to the parent within nine months after the adjudication of the child as abused, neglected or dependent; and (iii) failure to make reasonable progress toward the return of the child during any nine-month period after the end of the initial nine-month period following the adjudication of the child as abused, neglected, or dependent." *In re D.C.*, 209 Ill. 2d 287, 297 (2004); 750 ILCS 50/1(D)(m) (West 2010).

¶ 26 "[T]he reasonableness of a parent's progress toward the child's return is measured objectively by the amount of movement toward the goal of reunification." *In re D.J.S.*, 308 Ill. App. 3d 291, 295 (1999). "[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, *** in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). "[I]n determining whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)." *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 27 In this case, no evidence was presented that appellant ever made reasonable progress toward obtaining custody of the children. Appellant argues that he spent some time without using drugs, that he had some good visits with his children, and that he made some repairs to the

children's mother's home. These isolated instances of good conduct, even if accepted as true, are not enough to show that appellant ever made reasonable progress toward the return of his children. Therefore, the trial court's determination of unfitness is not against the manifest weight of the evidence.

¶ 28 III. Best Interest

¶ 29 After a parent is found unfit "the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated. Accordingly, at a best interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d at 364. "Courts must not allow the child to live indefinitely with a lack of permanence inherent in a foster home." *In the Interest of A.H.*, 215 Ill. App. 3d 522, 530 (1991). Evidence that a foster parent is interested in adopting a child is evidence that it is in the best interest of the child to terminate the natural parent's parental rights. See *In the Interest of W.U.*, 199 Ill. App. 3d 320, 326 (1990).

¶ 30 The evidence here shows that it was in the best interest of the children that the appellant's parental rights be terminated so that they could be adopted by their foster parents. The children are thriving in their foster homes, and there is no evidence that appellant will become a fit parent in the near future. Appellant had over two years to work on the services in his client-service plan; he has not completed even one of the tasks in the client-service plan. The evidence is overwhelming that appellant will not be come a fit parent in the near future. The children should

not have to languish in foster care until appellant becomes a fit parent. Considering all of the above evidence, the trial court's finding, that it was in the best interest of the children to terminate appellant's parental rights, was not against the manifest weight of the evidence.

¶ 31 CONCLUSION

¶ 32 The trial court's determination that appellant had not made reasonable progress toward obtaining custody of his children was not against the manifest weight of the evidence. Neither was the court's determination that appellant was unfit for failing to maintain a reasonable degree of interest, concern or responsibility for the children's welfare. Either of these bases alone is sufficient to affirm the trial court's finding that appellant is unfit. Finally, the court's determination that it is in the children's best interest to terminate appellant's parental rights is not against the manifest weight of the evidence.

¶ 33 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 34 Affirmed